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- 1 -

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|------------------------------|---|----------------------------------|
| In re Application of: | : | Before the Examiner: |
| Lamberton et al. | : | Nguyen, Dustin |
| Serial No.: 09/523,056 | : | Group Art Unit: 2154 |
| Filed: March 10, 2000 | : | |
| Title: SYSTEM AND METHOD FOR | : | IBM Corporation |
| IMPROVED LOAD BALANCING AND | : | P.O. Box 12195 |
| HIGH AVAILABILITY IN A DATA | : | Dept. 9CCA, Bldg. 002-2 |
| PROCESSING SYSTEM HAVING AN | : | Research Triangle Park, NC 27709 |
| IP HOST WITH A MARP LAYER | : | |

RESPONSE TO NOTICE OF NON-COMPLIANCE

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Non-Compliance having a mailing date of September 20, 2004 (Paper No. 15), with a time for response set to expire on August October 20, 2004. Applicants respond as follows:

CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence (along with any item referred to as being enclosed herewith) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 7, 2004.

Signature

Serena Beller

(Printed name of person certifying)

The Examiner asserts that Applicants' Appeal Brief (Paper No. 14) does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters pursuant to 37 C.F.R. §1.192(c)(4). Applicants would first like to note that 37 C.F.R. §§1.192, 1.193, 1.194, 1.195 and 1.196, including 37 C.F.R. §1.192(c)(4) cited by the Examiner, have been removed and reserved as of September 13, 2004.

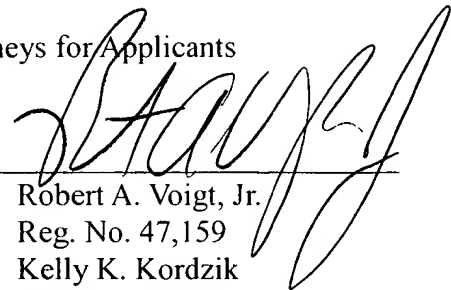
Furthermore, Applicants respectfully disagree that Applicants' Appeal Brief did not contain a concise explanation of the claimed invention. Applicants kindly direct the Examiner's attention to the last paragraph of page 4 which continues onto the top of page 5 of Applicants' Appeal Brief. The paragraph contains a concise explanation of the claimed invention including citations to particular page and line numbers in the specification. However, Applicants amended the last paragraph of page 4 which continues onto the top of page 5 of the Appeal Brief to include, in addition to the citations to the specification as mentioned above, citations to particular elements in Figure 4. Further, since the Examiner requested Appellants to provide a concise explanation of the claimed invention after September 13, Appellants amended the Appeal Brief submitted on May 21, 2004 by specifically stating which claims are appealed under the section entitled "Status of Claims"; modifying the title of Section V to be "Summary of the Claimed Subject Matter" from "Summary of the Invention"; inserting a concise explanation of the subject matter defined in each independent claim in Section V; replacing the Section entitled "Issues" with the Section entitled "Grounds of Rejection to be Reviewed on Appeal" and deleting the Section entitled "Grouping of Claims" to have the Appeal Brief conform to the requirements of 37 C.F.R. §41.35 which has replaced 37 C.F.R. §§1.192, 1.193, 1.194, 1.195 and 1.196. Accordingly, Applicants respectfully assert that the Amended Appeal Brief is in compliance and respectfully request the Examiner to withdraw the notice of non-compliance.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicants

By: _____


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FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

33

Application Number

09/523,056

Filing Date

March 10, 2000

First Named Inventor

Lamberton et al.

Art Unit

2154

Examiner Name

Dustin Nguyen

Attorney Docket Number

FR9-99-008

ENCLOSURES (Check all that apply)

- | | | |
|--|---|--|
| <input type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance communication to Technology Center (TC) |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input checked="" type="checkbox"/> Rspnse to Not. of Non Compliance | <input type="checkbox"/> Petition | <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Terminal Disclaimer | <input type="checkbox"/> Other Enclosure(s) (please identify below): |
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| <input type="checkbox"/> Certified Copy of Priority Document(s) | Remarks | |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application | Amended Appeal Brief | |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | |
|-------------------------|---|
| Firm or Individual name | Winstead Sechrest & Minick P.C. Robert A. Voigt, Jr. Reg. No. 47,159 |
| Signature | |
| Date | 10/16/04 |

CERTIFICATE OF TRANSMISSION/MAILING

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| | | | |
|-----------------------|---------------|------|----------|
| Typed or printed name | Serena Beller | | |
| Signature | | Date | 10/17/04 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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